New Nouveau Brunswick CANADA

News Release

Communications New Brunswick

Human Rights Commission

UN Human Rights Committee rejects Malcolm Ross claim (00/12/06)

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FREDERICTION (CNB) -- The United Nations' Human Rights Committee has unanimously rejected a claim by former teacher Malcolm Ross that his right to freely express his religious opinions had been violated when he was transferred to a non-teaching position because his writings and statements were found to have created a poisoned environment for Jewish students.

Ross had asked the UN Human Rights Committee to say that a decision by the Supreme Court of Canada in 1996 violated his freedom of thought, conscience and religion and his freedom of expression, contrary to articles 18 and 19 of the International Covenant on Civil and Political Rights. Canada is a signatory of the Optional Protocol, a treaty that allows individuals who have exhausted domestic remedies to file complaints with the committee about alleged violations of that international covenant.

The 15 members who participated in the committee decision all rejected Ross' claim. They found that the limit to Ross' freedom of religion was permitted because it was prescribed by law and necessary to protect the fundamental rights and freedoms of others. Similarly, all but one of the members found that the limit to Ross' freedom of expression was allowed since it was provided by law and necessary to respect the rights and reputations of others. The other committee member went even further against Ross, finding that Ross' freedom of expression had not been restricted. This is because freedom of expression entailed duties and responsibilities, and article 20 of the international covenant prohibited advocacy of religious hatred that constitutes incitement to discrimination, hostility and violence.

"We believe that justice was done," New Brunswick Human Rights Commission chair Dr. Patrick Malcolmson said. "This decision shows that the balance that our laws strike between freedom of expression and freedom from discrimination is consistent with international human rights standards."

Professor Tom Kuttner, who was a counsel pro bono for the commission, said, "The decision is an important affirmation by the international community of the integrity of the Canadian human rights regime in general, and that of New Brunswick in particular, and, for this, we can all be justly proud."

The Human Rights Committee decision is the culmination of a process that started in 1988 when Jewish parent David Attis, whose children were students in Moncton's English-language school district, filed a complaint of discrimination with the New Brunswick Human Rights Commission. Attis alleged in part that the school board, by failing to take appropriate action against Ross, had condoned his anti-Jewish views and had thus discriminated against Jewish students in the provision of a public service. Ross' views had been communicated in four books, as well as in published letters and media interviews, and

were widely known in the Moncton area.

The New Brunswick Human Rights Commission sought the appointment of a human rights board of inquiry, an independent quasi-judicial tribunal, to hold a hearing into the Attis complaint. The Minister of Labour appointed University of New Brunswick Law professor Brian Bruce as a one-person board of inquiry in 1988, but the hearing did not start until 1990 due to several legal challenges and appeals.

After 22 days of hearings, the board of inquiry issued its decision in 1991. While it did not find that Ross had spread his views in the classroom, it found in part that his off-duty writings had denigrated the Jewish faith, had called upon true Christians to hold Jews in contempt, had claimed that Christians were under attack by an international conspiracy in which Jewish leaders were prominent, and had questioned the number of Jews killed in the Holocaust so as to buttress the view that there was a Jewish conspiracy to take over the world. Over the years, this had created a poisoned environment within the school district that greatly interfered with the educational service provided to Attis' children, but the school board had failed to address this in any meaningful way prior to 1988.

The board of inquiry issued an order that included a requirement that the Moncton school board place Ross on a leave of absence without pay and offer him a non-teaching position if one became available. As a result, Ross was transferred to a non-classroom teaching job a week later. He was laid off when the school system was reorganized province-wide in 1996.

Ross challenged the order of the board of inquiry in the Court of Queen's Bench in 1991. When Mr. Justice Paul Creaghan upheld most of the board of inquiry order, Ross appealed to New Brunswick Court of Appeal in 1992. In a divided decision in 1993, the court allowed Ross' appeal and ordered him reinstated to his teaching position. The New Brunswick Human Rights Commission and Attis appealed this decision to the Supreme Court of Canada, which heard the case in October 1995.

In its April 1996 decision, the Supreme Court of Canada agreed with a finding that Ross' continued employment as a teacher had impaired the educational environment generally in creating a 'poisoned' environment characterized by a lack of equality and tolerance. It said that the off-duty conduct of a teacher was relevant where a poisoned environment could be traced to off-duty conduct that is likely to produce a loss of confidence in the teacher and the system as a whole. The court upheld the board of inquiry order to transfer Ross to a non-teaching position.

In May 1996, Ross filed a communication to the UN Human Rights Committee to challenge the Supreme Court of Canada decision confirming his transfer to a non-teaching position. The views of the committee were adopted on Oct. 18, 2000. Canada and New Brunswick were notified of this decision on Nov. 22, 2000.

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EDITOR'S NOTE: Printed copies of the board of inquiry 1991 decision are available from the Human Rights Commission at 506-453-2301 or hrc.cdp@gnb.ca. The full text of the UN Human Rights Committee's decision can be found at:
http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/29712c8ddea3414dc12569ad003d0316?Opendocument

The full text, with headnote, of the Supreme Court of Canada's decision is available at:

http://www.lexum.umontreal.ca/csc-scc/en/pub/1996/vol1/html/1996scr1_0825.html

The full text of the International Covenant on Political and Civil Rights can be found at:

http://www.unhcr.ch/refworld/legal/instruments/detention/civpot_e.htm

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Prof. Don Fleming, UNB Law School professor: 506-453-4726. (Kuttner and Fleming provided substantial assistance to the NBHRC and the government of Canada in its response to Ross' UN appeal.)

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